

**JUN 05 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ERIC OJA,

Plaintiff - Appellant,

v.

BLUE MOUNTAIN COMMUNITY  
COLLEGE; MICHAEL SHEA; TRAVIS  
KIRKLAND,

Defendants - Appellees.

No. 04-35534

D.C. No. CV-03-00964-PA

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Oregon  
Owen M. Panner, Senior Judge, Presiding

Argued and Submitted November 14, 2005  
Portland, Oregon

Before: FERGUSON, KLEINFELD, and GRABER, Circuit Judges.

Oja claims, under 42 U.S.C. § 1983, that he was denied a property interest in his employment without due process of law. There can be a property interest in an

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

employment context only if there is a “legitimate claim of entitlement” to employment.<sup>1</sup> There can be a legitimate claim of entitlement only if there is a binding contract. This property interest is further defined by state law.<sup>2</sup>

Oja did not have a valid, binding contract. By statute, a professor does not have a valid employment contract until the college’s Board of Education approves it.<sup>3</sup> The Board never approved Oja’s contract, so Oja had no property interest in his employment, and his § 1983 claim fails. Oja’s breach of contract and breach of the covenant of good faith and fair dealing claims, therefore, fail as well.

The promissory estoppel claim likewise fails because only the Board can make a binding promise.<sup>4</sup> Oja can establish a claim for promissory estoppel by showing that 1) the college made a promise; 2) the college could foresee the promise would induce him to quit his job and move; 3) he actually relied on the

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<sup>1</sup> *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

<sup>2</sup> *Brady v. Gebbie*, 859 F.2d 1543, 1548 (9th Cir. 1988).

<sup>3</sup> OR. REV. STAT. § 341.290 (2003).

<sup>4</sup> *Id.*

promise; and 4) he substantially changed his position in reliance on the promise.<sup>5</sup>

Oja cannot establish that the college made a promise.

Oja can prevail on his fraud claim if he shows 1) that Defendants made a false representation 2) with the knowledge that it was false, 3) intending Oja to rely on the statement, 4) that he justifiably relied on the representation and 5) he was damaged as a result of the reliance.<sup>6</sup> With respect to Defendant Blue Mountain, Oja cannot show that he “justifiably relied” on the representation, because without Board approval, an offer was not within the college’s “lawful powers.”<sup>7</sup>

We reverse the summary judgment in favor of Defendant Shea on the misrepresentation claim. Shea was the person with authority to advise people in Oja’s position whether they were hired, and he did so advise Oja, unambiguously and emphatically. Oja established at least a genuine issue of fact as to all five elements.

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<sup>5</sup> See *Neiss v. Ehlers*, 899 P.2d 700, 703 (Or. Ct. App. 1995).

<sup>6</sup> *Meade v. Cedarapids, Inc.*, 164 F.3d 1218, 1221 (9th Cir. 1999).

<sup>7</sup> *Or. ex rel. Dept. of Transp. v. Hewett Professional Group.*, 895 P.2d 755, 762-63 (Or. 1995) (citations omitted).

Section 659.815 makes it illegal to use any “false . . . representation . . . concerning the amount or character of the compensation to be paid” to persuade or engage an employee to “change from one place to another.”<sup>8</sup> There was never any doubt about the amount and character of the compensation to be paid. Instead, there was an allegedly false representation as to the existence of the position the compensation for which was known. A later effort to mitigate Oja’s damages did not alter the nature of the original representation.

Each party shall bear their own costs.

**AFFIRMED in part, REVERSED and REMANDED in part.**

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<sup>8</sup> OR. REV. STAT. § 659.815 (2003).